

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JIMMY TODD KIRKSEY,

Petitioner,

9 || VS.

E K McDANIEL *et al*

Respondents

2:97-CV-0333-PMP-PAL

ORDER

13 On May 10, 2010, this court entered an order lifting the stay and reopening proceedings in
14 this case. Docket #173. In addition, the court allowed petitioner thirty (30) days within which to
15 file an amended petition for a writ of habeas corpus. *Id.* After obtaining one extension of time
16 (docket #175), petitioner filed his amended petition (docket #177) on July 19, 2010.

17 The amended petition having been filed, the court shall now set a schedule for further
18 litigation of this action.

IT IS THEREFORE ORDERED:

20 1. **Response to Petition.** Respondents shall have until and including **September 30,**
21 **2010**, to file and serve an answer or other response to petitioner's amended petition for writ of
22 habeas corpus (docket #177).

23 2. **Reply and Response to Reply.** Petitioner shall have **forty-five (45) days** following
24 service of an answer by respondents to file and serve a reply. Respondents shall thereafter have
25 **thirty (30) days** following service of a reply to file and serve a response to the reply.

3. **Briefing of Motion to Dismiss.** If respondents file a motion to dismiss, petitioner

1 shall have **thirty (30) days** following service of the motion to file and serve an opposition to the
2 motion. Respondents shall thereafter have **thirty (30) days** following service of the opposition to
3 the motion to file and serve a reply.

4. **Evidentiary Hearing.** If petitioner wishes to request an evidentiary hearing,
5 petitioner shall file and serve a motion for an evidentiary hearing concurrently with, but separate
6 from, his reply to respondents' answer or his opposition to respondents' motion to dismiss. The
7 motion for an evidentiary hearing must specifically address why an evidentiary hearing is required,
8 and must meet the applicable requirements of 28 U.S.C. § 2254(e). The motion must identify
9 whether an evidentiary hearing was held in state court, and, if so, state where the transcript is located
10 in the record. If petitioner files a motion for an evidentiary hearing, respondents shall file and serve
11 a response to that motion concurrently with, but separate from, their response to petitioner's reply or
12 their reply in support of a motion to dismiss. Petitioner shall thereafter have **twenty (20) days**,
13 following service of respondents' response to the motion for an evidentiary hearing, to file and serve
14 a reply in support of that motion.

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16 DATED: July 20, 2010.

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19 PHILIP M. PRO
United States District Judge

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